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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR  | ATTORNEY DOCKET NO.         | CONFIRMATION NO. |
|---|-------------|-----------------------|-----------------------------|------------------|
| 09/989,105  | 11/21/2001  | Gert-Jan Van Lieshout | 2380-563                    | 9283             |
| 7590 08/12/2004   |             |                       |                             |                  |
| NIXON & VANDERHYE P.C.<br>8th Floor<br>1100 North Glebe Road<br>Arlington, VA 22201 |             |                       | EXAMINER<br>SOBUTKA, PHILIP |                  |
|   |             |                       | ART UNIT<br>2684            | PAPER NUMBER     |

DATE MAILED: 08/12/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/989,105

Applicant(s)

LIESHOUT ET AL.

Examiner

Philip J. Sobutka

Art Unit

2684

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>4.5</u> | 6) <input type="checkbox"/> Other: ____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-4,6-27,29-42,44-52 are rejected under 35 U.S.C. 102(e) as being anticipated by Toskala et al (US 6,650,905).

Consider claims 24,34. Toskala teaches a node comprising: a detector configured to detect one or more conditions relating to a transmit power level for transmitting information over the radio interface to a mobile station using the common transport channel (Toskala see especially col 9, lines 40-45); and power control circuitry configured to determine power adjustment information for use in regulating a transmit power level on the common transport channel based on the detected one or more conditions (Toskala see especially col 9, line 60 – col 10, lines 10).

As to claim 1, the system of Toskala would perform the claimed steps as shown above:

Consider claims 36,41. Toskala teaches a network comprising: a serving radio network controller (SRNC) responsive to an external network, for initially establishing a connection over a radio interface with a mobile station via a first base station supervised

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by the serving radio network controller (Toskala see especially fig 3, col 3, lines 36-44); a drift radio network controller, coupled to the SRNC (Toskala see especially fig 3) for supporting the connection from the serving radio network controller to the mobile station over a common transport radio channel after the connection is handed over to a second base station supervised by the drift radio network controller; the SRNC determining one or more condition that affect transmission of information from the second base station to the mobile station over the common transport channel, to determine power adjustment information based on the determined one or more conditions, and to provide the power adjustment information to the DRNC and the DRNC using the power adjustment information from the SRNC to regulate a transmit power level on the common transport channel (Toskala see especially col 4, lines 18-57).

As to claims 2,3,25,26,42, note that the conditions include information related to signals strength received by the mobile (Toskala see especially col 8, lines 20-57).

As to claims 4,27, note that Toskala teaches using SIR as the quality measure (Toskala see especially col 3, line 65 – col 4, line 18).

As to claims 8,29, note that the condition monitored by Toskala relates to base station downlink transmit power (Toskala see especially col 8, lines 21-57).

As to claim 7, note that Toskala teaches the signal being a pilot signal (Toskala see especially col 4, lines 18-57, col 10, lines 30-57).

As to claims 9,30, note that Toskala teaches the node receiving information relating to requested service (Toskala see especially col 9, line 60 – col 10, lines 11).

As to claims 6,10,11,21,13,31,32,38,50, note that the common channel is a downlink shared, common packet channel (Toskala see especially col 9, lines 60-65).

As to claims 12,33, note that the node is a Serving RNC (Toskala see especially fig 3).

As to claims 14,35, note that the RNC node sends power control information to a drift RNC (Toskala see especially fig 3, col 2, lines 14-27).

As to claims 17-19,46-48, note that Toskala teaches sending the power information as offset data in a data frame (Toskala see especially col 10, lines 30-57). Regarding claims 18,47, note that of course, data is sent as bits, and if the bit positions are used, they are certainly not "spare".

As to claims 20,37,49, note that of course the control signals between the RNC and DRNC would use a control signal protocol.

As to claims 22,39,51, note that power may be controlled per user connections (Toskala see especially col 9, lines 43-60).

As to claims 23,40,52, note that Toskala teaches the transmit power being performed on data packets (Toskala see especially col 9, line 60 – col 10, line 11).

As to claims 15,16,44,45 note that Toskala teaches the RNC's setting the initial transmit power and that control can be made at the serving or drift RNC (Toskala see especially figs 1,2,3, col 3, lines 37-64).

### **Claim Rejections - 35 USC § 103**

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 5,28,43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Toskala in view of Rezaiifar et al (US 6,167,270).

Consider claims 5,28,43. Toskala teaches everything claimed except for the power being controlled on the basis of error rate. Rezaiifar teaches controlling power based on the error rate (Rezaiifar see especially col 9, lines 18-36). It would have been obvious to one of ordinary skill in the art to modify Toskala to use the error rate to control power as taught by Rezaiifar in order to ensure that the control was based on a quality measure of the actual desired signal.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Jeschke et al (US 6,389,265) and Aalto (WO 99/41850) have been cited to show power control with serving and drift RNC's.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip J. Sobutka whose telephone number is 703-305-4825. The examiner can normally be reached on Monday-Friday 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nay Maung can be reached on 703-308-7745. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-872-9314 for After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Philip Sobutka  
(703) 305-4825

August 3, 2004

  
**NAY MAUNG**  
**SUPERVISORY PATENT EXAMINER**